



STATE PROCUREMENT OFFICE
NOTICE OF REQUEST FOR EXEMPTION
FROM HRS CHAPTER 103D

13 JAN 22 P3:19

STATE PROCUREMENT OFFICE
STATE OF HAWAII

TO: Chief Procurement Officer

FROM: Department of the Attorney General
Name of Requesting Department

Pursuant to HRS § 103D-102(b)(4) and HAR chapter 3-120, the Department requests a procurement exemption for the following:

1. Describe the goods, services or construction:

The Department of the Attorney General seeks to hire legal counsel to provide legal counsel, assistance and representation for the Department of Transportation (DOT) in a threatened criminal prosecution by the United States Department of Justice. In December 2012, DOT was notified that the DOJ intends to file criminal indictments against the DOT for alleged violations of the Migratory Bird Treaty Act (MBTA). The MBTA is a complex statute and if the State is indicted and successfully prosecuted it could result in substantial penalties to the DOT. We understand that DOJ filed criminal indictments against the County of Kauai and KIUC, resulting in plea agreements and placement under probation with substantial terms and conditions against those two defendants.

2. Vendor/Contractor/Service Provider:

Bingham McCutchen LLP

3. Amount of Request:

\$ Not to exceed \$150,000

4. Term of Contract From: upon approval To: resolution of
12/23/13 1/22/13 - 1/21/14 criminal case

5. Prior SPO-007, Procurement Exemption (PE): none

6. Explain in detail, why it is not practicable or not advantageous for the department to procure by competitive means:

Time is of the essence. The DOT just learned of the potential indictments in December 2012, and DOT and DOJ are scheduled to meet this month, after which criminal indictments could be issued. It is imperative that DOT have counsel available to advise and strategize and assist in negotiations and discussions with DOJ before any indictments are issued. If indictments are issued, then the DOT must have experienced criminal defense counsel. The type of legal expertise required to defend the DOT is unique, as few attorneys in the United States have experience with the MBTA. The Attorney General does not develop a list to procure the services of criminal defense attorneys under 103D-304, HRS, as generally the State is immune from criminal liability. Further, because the next meeting with DOJ that could result in negotiations or criminal indictments are imminent, publication of a notice for statements of qualifications and expressions of interest from attorneys for this narrow subject matter expertise would not be practicable or in the best interests of the State.

7. Explain in detail, the process that will be or was utilized in selecting the vendor/contractor/service provider:

The Attorney General has interviewed several individuals from established national and local law firms using recommendations from the National Association of Attorneys General. The Attorney General has also reviewed the existence of local counsel for familiarity and expertise in this specialized area. Final selection will be based upon depth and scope of experience and expertise with MBTA and negotiations and trial experience with or against the DOJ, proposed strategy, and proposed fees.

8. Identify the primary responsible staff person(s) conducting and managing this procurement. (Appropriate delegated procurement authority and completion of mandatory training required).

*Point of contact (Place asterisk after name of person to contact for additional information).

Name	Division/Agency	Phone Number	e-mail address
David M. Louie	Department of the Attorney General	586-1500	David.M.Louie@hawaii.gov

*All requirements/approvals and internal controls for this expenditure is the responsibility of the department.
I certify that the information provided above is, to the best of my knowledge, true and correct.*



Department Head Signature

JAN 18 2013

Date

For Chief Procurement Officer Use Only

Date Notice Posted: 1/23/2013

Inquiries about this request shall be directed to the contact named in No. 8. Submit written objection to this notice to issue an exempt contract within seven calendar days or as otherwise allowed from date notice posted to:

state.procurement.office@hawaii.gov

Chief Procurement Officer (CPO) Comments:

Approval is granted for the period 01/22/13 to 01/21/14 and is for the solicitation process only, HRS section 103D-310(c) and HAR section 3-122-112, shall apply (i.e. vendor is required to be compliant on the Hawaii Compliance Express) and award is required to be posted on the Awards Reporting System.

If there are any questions, please contact Bonnie Kahakui at 587-4702, or bonnie.a.kahakui@hawaii.gov.

☒ Approved

☐ Disapproved

☐ No Action Required



Chief Procurement Officer Signature

1/30/2013
Date